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THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE, edited by David Kairy

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THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE. Edited by David Kairys. New York: Pantheon Books. 1982. Pp. v., 321. \$9.95 (paperback).

Almost every person who comes into contact with the American legal system criticizes it. Both from within and outside the legal profession, the slow processes and the workings of justice are met with complaints. In spite of its battered reputation, the law receives an almost universal acceptance.

In the introduction to *The Politics of Law: A Progressive Critique*, editor David Kairys stated the book's purpose to be a progressive critical analysis of law in American society. The views of many legal scholars and practitioners are voiced in this compilation of short essays. A unifying theme throughout all of the essays is that there is no distinctly legal mode of reasoning. Legal analysis is not an independent manner of thought; it is a product of the socioeconomic and political structure. In other words, the law is the functionary of established political choices and the perpetuator of elitist values.

The tone of the book is disapproving at some points and optimistic at others. As expected, no author comes out entirely in favor of the existing legal system. However, none of the authors have a vision of how to adequately rework the system to achieve an ideal one.

The factor most in favor of the present legal system is its neutral, unbiased appearance. Its supposed indifference to power struggles legitimizes the mystique of justice in a democracy where most people are only marginal participants in important decisions. The legal system's greatest duty is to avoid looking political and at the same time to reinforce and rationalize the existing values of our society.

The popular image of the law of this nation is cloaked in the natural law tenets which imply that all civilized nations and their citizens require the same things; and that the law provides these things without showing favoritism or the involvement of any group's special interests.

The ideology and the functional reality of democratic justice are shown to be partners who claim to be at odds with each other while being necessary for mutual survival. Neither the ideology nor the practice are self-supporting. They work together to give credence to the phrase "justice for all" by making the court and political avenues open to all while remaining predictably partial to a few. Together they can use *stare decisis* to maintain the status quo. In this way, the legal system perpetuates the racism, sexism and elitism that are part of the American heritage. The authors try to convince us that pre-existing rights and status form the legal base, rather than vice versa.

The essays in this book are divided into three sections. The first section considers the idealized model of impersonal justice with respect to legal reasoning, jurisprudence and legal education. The second part consists of ten chapters focusing on substantive issues and selected fields of law and their roles in the operation of the law. The final section discusses a variety of progressive approaches to the law.

The essays are easy to follow and not so limited in outlook that a person outside the legal field would not find them of interest. The similarity of tone provides continuity despite the diverse topics. Some authors are more biting

in their critiques, while others are perhaps less convinced of alternatives. Many of the thought provoking essays are the ones that leave the reader with the feeling that the author is not sure of what he would do if given the chance to be a 'realist' reformer. We are left with the attitude that it is all very well to point out the problems in particular areas or even the broader picture, but once we leave the natural law premise, where do we go?

The appearance of consistency in our legal system is a good feature. It would be unsatisfying to lose this for the sake of avowing that legal thought should be in accord with public sentiments of the contemporary era. Yet there is a need for flexibility in policy oriented decisionmaking. The big uncertainty is where to draw the line between unwavering generalities and ad hoc unprincipled case-by-case adjudication.

The Politics of Law: A Progressive Critique provides a provocative insight into America's legal institution. It is worthwhile whether one has time to read the whole collection or prefers to get a quick dose of a certain subject. This book provides an alternative analysis of legal thinking than the one generally put forth by major law firms. After reading it, we do not wonder why most people prefer to stay at arm's length from the law; but we will wonder why a system of reasoning that is supposedly unintelligible to a lay person can be the foundation for justice.

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